

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34455

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 513
	)	
Plaintiff-Respondent,	)	Filed: June 13, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
CASEY WAYNE HAYES,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction for grand theft, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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LANSING, Judge

Casey Wayne Hayes appeals his judgment of conviction for grand theft rendered on a jury verdict. Hayes claims there is insufficient evidence to support the conviction.

I.

BACKGROUND

On September 11, 2006, Wesley Kile left his truck running in his driveway to let the truck warm up while he went back into his house. While in the house, Kile and his son, Mark, heard the truck drive away at what they thought was a high rate of speed. Kile and Mark then went outside and saw that Kile's truck was gone. Mark immediately got in his own truck and attempted to locate Kile's truck, while Kile called the police. Mark drove around for several minutes before locating the truck in a trailer park near his parents' home. Mark pulled up alongside of the truck, which was occupied by Casey Wayne Hayes. Mark asked Hayes what he thought he was doing, whereupon Hayes looked at Mark and took off. Mark once again

followed Hayes until Hayes entered a cul-de-sac and Mark blocked the exit, trapping Hayes. Hayes then abandoned the truck and fled on foot. The police and Kile soon arrived, and both Mark and Kile gave witness statements. While driving back to Kile's home, Mark caught sight of Hayes walking down the street. Kile called the police, and Kile and Mark kept track of Hayes until the police arrived and arrested him.

Hayes was charged with grand theft, and a jury found him guilty. Hayes appeals from the resulting judgment of conviction.

## II.

### ANALYSIS

Hayes argues that there is insufficient evidence to support the jury's verdict because the State did not prove the mental element of theft. That is, he contends that the State failed to prove that he had the intent to permanently deprive Kile of the use and enjoyment of his truck, rather than intending only a temporary deprivation.

Appellate review of a challenge to the sufficiency of the evidence is limited. A jury verdict will not be set aside if it is supported by substantial and competent evidence upon which a rational trier of fact could find all elements of the crime beyond a reasonable doubt. *State v. Thomas*, 133 Idaho 172, 174, 983 P.2d 245, 247 (Ct. App. 1999); *State v. Haley*, 129 Idaho 333, 334, 924 P.2d 234, 235 (Ct. App. 1996). We may not substitute our opinion for that of the jury as to the credibility of witnesses or the weight to be given to their testimony. *State v. Gonzalez*, 134 Idaho 907, 909, 12 P.3d 382, 384 (Ct. App. 2000). The facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury's verdict. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Peite*, 122 Idaho 809, 823, 839 P.2d 1223, 1237 (Ct. App. 1992).

Hayes was convicted of grand theft under I.C. §§ 18-2403(1), which defines theft as follows:

A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

Another statute defines the intent to deprive another of property as including an intent:

(a) To withhold it or cause it to be withheld from [the owner] permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to [the owner].

I.C. § 18-2402(3)(a).

Hayes argues that the evidence presented by the State only demonstrates the intent to temporarily deprive Kile of possession and use of his truck. In support, he points out that he was in possession of the truck only for a matter of minutes, the truck was recovered only four blocks from Kile's home, and the truck and its contents were undamaged.

This evidence, however, does not foreclose an inference that Hayes intended to permanently deprive Kile of the truck at the time that he took it. A defendant's criminal intent may be inferred from the defendant's acts and conduct or other circumstantial evidence. *State v. Pole*, 139 Idaho 370, 373, 79 P.3d 729, 732 (Ct. App. 2003); *State v. Smith*, 139 Idaho 295, 298, 77 P.3d 984, 987 (Ct. App. 2003). The State presented evidence that Hayes took Kile's truck without his permission, that when confronted by Kile's son, Hayes drove off, and that Hayes did not abandon the truck until he was trapped in a cul-de-sac. The State further showed that Hayes fled on foot and attempted to avoid detection. From this evidence, the jury could reasonably infer that Hayes intended to permanently deprive Kile of his truck. We conclude that substantial evidence exists upon which the jury could find beyond a reasonable doubt that Hayes held the requisite criminal intent for grand theft.

The judgment of conviction is affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**